

CITY COUNCIL CONFERENCE MINUTES

December 22, 2009

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a conference at 5:30 p.m. in the Municipal Building Conference Room on the 22nd day of December, 2009, and notice and agenda of the meeting were posted at the Municipal Building at 201 West Gray, and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Atkins, Butler, Cubberley,
Dillingham, Ezzell, Griffith, Kovach, Quinn, Mayor
Rosenthal

ABSENT: None

PRESENTATION OF NEW STORM WATER REGULATIONS MANDATED BY THE CORPS OF ENGINEERS AND THE OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY AFFECTING MOST STREAMS AND CHANNELS IN THE CITY OF NORMAN.

Mr. Steve Lewis, City Manager, said information presented to Council this evening is the result of City Staff and the City Council's Sub-Committee on the Stormwater Master Plan (SWMP) looking at things occurring on State and Federal levels and this is an opportunity to educate the development community on evolving legislation and regulations.

Mr. Shawn O'Leary, Director of Public Works, said 50 to 70 people attended the Developers Forum held this afternoon at City Hall on these issues. He said there are two Federal agencies involved in the stormwater regulation; U.S. Army of Corps Engineers (USACE) and the U.S. Environmental Protection Agency (USEPA) and the Oklahoma Department of Environmental Quality (ODEQ) is representing the USEPA this evening.

Mr. Andy Commer, Assistant Chief, Department of the Army Regulatory Office of the Corps of Engineers (COE) in Tulsa, said the mission of the Regulatory Program is to protect water resources while allowing reasonable development to occur through fair and flexible balanced permit decisions. He said the COE takes all the information of what someone wants to do with waters of the U.S. and balances those interests, sometimes competing and conflicting interests, to render an appropriate decision. He said 75% of permit requests are related to private land, but the Clean Water Act (CWA) applies to all lands where the water is part of the tributary system. The Tulsa District authorizes approximately 95% of nationwide and general permits. The program's three basic goals are to provide strong protection for the aquatic environment, enhance efficiency of the decision making process, and to ensure the regulated public is provided fair and reasonable decisions. He provided an overview of the program history and said the waterways of the nation are there for the public and have evolved over time. The regulations are founded from the Rivers and Harbors Act of 1899, which regulates activities specifically in navigable waters and the nearest navigable water to Norman is the South Canadian River.

Mr. Commer said the COE also regulates the CWA, a federal statute. The EPA has responsibility for the bulk of the CWA, but Congress expanded that authority to the COE since they already permitted navigable waterways. He said the purpose of the CWA is to protect the nation's waters from indiscriminate introduction of materials capable of causing pollution and the focus is to restore and maintain the physical, chemical, and biological integrity of the nation's waters. He said waters have to be related to tributary system to fall under the COE jurisdiction. He talked about the standards used in the mapping of waters and the use of blue lines to designate bodies of water. Mr. Commer said wetlands are parts of the waters of the U.S. where they are adjacent to a tributary channel and they have an ecological relationship that serves vital functions for downstream waters. He said wetlands are considered a special aquatic site much like coral reefs and are given special consideration. Additionally, permits are typically required for bridge and road construction over water, bank stabilization, stream modification, and buried utility line placement, but there are minor impact activities as well. He said the COE also permits temporary activities that have potential to impair the integrity of waters physically, chemically, and biologically.

Mr. Commer provided an overview of the regulatory processing steps and said the focus of the decision making process is getting down to the Least Environmentally Damaging Practical Alternative (LEDPA). He said there is a spectrum to the level of scrutiny on the authorization of permits as follows:

- Nationwide – minimal environmental impact
- Regional General – minor impact activities or activities in special waters
- Letter – minor impact activities that require public notices
- Individual – requires more intensive public interest review and impact evaluation

Mr. Commer said there are no special waters within Norman. He also said public involvement becomes pertinent at the individual permit level; however, these permits are rare.

Mr. Commer expressed the importance for anyone requesting a permit from the COE to plan ahead and consult early. He said permittees should integrate aquatic resource protection into planning; be prepared to demonstrate avoidance consideration and minimization measures for aquatic resource impacts; develop a project specific plan to compensate for unavoidable aquatic resource impacts; remember certain waters have special status such as scenic rivers and watershed tributaries, high quality waters, and endangered species inhabited waters; and understand the COE workload when a response deadline is needed.

Mr. Commer talked about enforcement and said the COE manages daily administration of enforcement activities and investigations; however, if there is a violation or an unauthorized activity, the EPA can step in and they have primacy for enforcement. He said new enforcement regulations require the COE to look at aquatic environment impact avoidance first, then minimization of impacts before looking at compensatory mitigation. He said applications must include mitigation of impact to aquatic environments before the COE can review it. He said compensatory mitigation to offset losses may take the form of restoration, enhancement, construction, and preservation of aquatic resources, habitats, wetlands, and association buffers. The three compensatory mitigations are Permittee Responsible Mitigation, Mitigation Banks, and In-Lieu Fee Mitigation, but said there are no In-Lieu Fee Mitigations in Oklahoma and there are only two Mitigation Banks in central Oklahoma. Mr. Commer said, for years, the COE has looked at mitigation on an acre for acre basis; however, the National Academy for Sciences Study and National Council of Research Reports is pushing the COE towards emphasizing mitigation on a functional basis rather than an acreage basis. He said the bottom line is to look at what aquatic resources provide for downstream waters as streams do more than transport water.

Mayor Rosenthal asked if maps will be available that show blue lines with issues relative to Norman and Mr. O'Leary replied that maps are available.

Items submitted for the record

1. PowerPoint presentation entitled, "New Storm Water Regulations," from the U.S. Army Corps of Engineers, Tulsa, dated December 22, 2009

Mr. Wayne Craney, ODEQ, said he works in the Water Quality Division as Section Manager for Industrial Permits and stormwater falls under industrial. He said one important thing about stormwater is that the approach has been to use general permits written by classes; construction, industrial, and individual stormwater permits. Mr. Craney said Oklahoma has 44 permits under the Municipal Separate Storm Sewer System (MSDA) with Norman being one of the permittees. He said screening evaluations are currently underway and the EPA is provided all audits and evaluations under these permits.

Mr. Craney said stormwater is the second largest category of complaints the ODEQ receives and their goal is compliance with the CWA provisions. He said if enforcement is necessary, it will be taken. Mr. Craney said, an example, is Grand Lake whose ecosystem is at or beyond the point of sustainability because of more development so the whole body of water is an impaired body of water. He said ODEQ is getting complaints and they are taking a very firm approach to the complaints. He said for enforcement, ODEQ performs inspections, leaves an inspection sheet with a fourteen day compliance period, and proceeds with an Notice of Violation (NOV) if compliance is not met. He said, finally, a Consent Order or an Administrative Compliance Order (ACO) is issued where penalties are mitigated.

Mr. Craney said permittee responsibilities are:

- Have permit authorization for activity
- Have a Stormwater Prevention Plan (SWP)
- Implement SWP
- Utilize Best Management Practices (BMP)
- Maintain BMP
- Add or strengthen BMP's when required
- Make a good faith effort

Mr. Craney said the EPA issued a final rule that established the Effluent Limit Guidelines (ELG) effective February 1, 2010. He said this rule will be phased in over four years, establishes a national minimum set of Best Management Practices (BMP's), and Numerical Turbidity Limits (NTL) to become effective for 20 acre tracts in August, 2011, and for 10 acre tracts by February, 2014. He said the new rules will be incorporated into the current permit process through a working group of people from diverse communities.

Items submitted for the record

1. PowerPoint presentation entitled, "Stormwater Permits," from the Oklahoma Department of Environmental Quality
2. United States Environmental Protection Agency Fact Sheet Final Rule: Effluent Guidelines for Discharges from the Construction and Development Industry
3. United States Environmental Protection Agency News Release – Water: EPA Issues Rule to Reduce Water Pollution from Construction Sites

Mr. O'Leary said the Stream Planning Corridors discussion has begun since the Council accepted the SWMP in November. He said the Citizens Task Force will be reassembled and a Staff Guidance Team has been appointed. A Public Forum will be held January 27, 2010, and Ms. Kathryn Walker, Assistant City Attorney, will make a presentation of the model language of a Stream Planning Corridor Ordinance with public input. He said following the Public Forum, the ordinance language will be resubmitted to the Citizen Task Force and Oversight Committee to refine.

Mr. Lewis asked for cost implications of the new rules in terms of short and long term costs for the development community and design professionals. Mr. O'Leary said the new rules will be imposed on the permittees and Staff is not clear on what those costs will be at this time; however, there will be additional requirements, which could be costly. He said developers are more concerned with the timeliness of acquiring the COE or ODEQ permits than the cost.

Councilmember Kovach asked if the permitting process includes aerial crossings such as utilities or pipes suspended over rivers and Mr. Craney replied that those type of activities do not usually require a permit.

The meeting adjourned at 6:30 p.m.

ATTEST:

City Clerk

Mayor